

IN THE MATTER OF:
CHARLES T. GAVIGAN
2758 YARNALL ROAD
BALTIMORE, MD 21227

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CBA-21-026

Re: Appeal of denial of reserved residential
handicapped parking space

* * * * *

OPINION

This case comes before the Baltimore County Board of Appeals (the Board) as the result of the denial of an application for a reserved handicapped parking space at 2758 Yarnall Road, Baltimore, Maryland 21227 (the Property) as set forth in a letter dated April 21, 2021 from Michael F. Filsinger, Chief of the Baltimore County Division of Traffic Engineering to Mr. Charles Gavigan (the Applicant). Attached to that letter Mr. Filsinger also included a copy of the Baltimore County Policy with respect to handicapped parking spaces.

A public hearing was held on July 21, 2021 at 10:30 a.m. before the Board. Mr. John Moore, a Traffic Engineering Inspector for the Baltimore County Division of Traffic Engineering (the County) testified before the Board. Mr. Gavigan appeared, *pro se*.

Mr. Moore testified that his office received an application for Personal Residential Permit for a reserved parking space at the above location on April 2, 2021 from Seung Lee from the Maryland Department of Transportation, Motor Vehicle Administration (County Exhibit 1). Following receipt of the above application, Mr. Moore visited and inspected the front and rear of the property on April 12, 2021 (County Exhibits 2A-2-C). The Property is a middle-of-group row house as shown in County Exhibit 2-A, with one small step up from the street to the front door. County exhibits 2-B, and 2-C show the rear of the property and the alley in the rear. The rear yard

is open with two tiers. The top tier contains a shed, and the bottom tier is a concrete pad. There are approximately five steps from the rear concrete pad to the top tier. There are approximately five additional steps from the top tier to the back-door entrance to the house. It is approximately 25 feet from the concrete pad to the back-door entrance.

Mr. Moore also presented a Handicapped Parking Worksheet (County Exhibit 2-D), Code of Maryland Regulations 11.16.03.06 (County Exhibit-3), Maryland Transportation Article Section 21-1005 (1) (County Exhibit 4), Baltimore County Policy Manual Sections 3 (B) and (C) (County Exhibit 5), and a letter to the Applicant dated April 21, 2021 (County Exhibit 6) denying said application. Mr. Gavigan did not object to the exhibits presented by Mr. Moore.

Mr. Moore stated that the County was not contesting the physical disability of the Applicant. He did however testify that the County denied the application for reserved on-street parking based upon the Baltimore County Policy Manual Section 3 (B) and (C) which states:

(B) A reserved on-street parking space will not be authorized for any applicant whose property has a self-contained off-street parking area or where off-street parking is provided to the applicant by private sources. This item shall apply to all properties regardless of the time they were built or sub-divided. The property shall be considered to have available off-street parking area if the aforementioned area existed at the time that the applicant purchased or moved into the property or if it was made available at a subsequent time. If a parking pad, driveway, concrete ribbons, garage, soil stabilized area, etc. was removed or made inaccessible at any time after the applicant purchased or moved into the property, the parking area shall still be considered to exist for purposes of this policy.

(C) The property shall be evaluated on whether the off-street parking area exists, NOT on whether on off-street parking is available for use. In addition, the placement of any non-permanent objects on top of a parking area, (e.g. boats, campers, trailers, above-ground pools, sheds, etc.) will not in any way alter the recognition that the parking area does in fact exist.

When describing the rear of the Property, referencing the above exhibits, Mr. Moore testified that there was a self-contained off-street parking area that has ample area for Mr. Gavigan to park his vehicle.

Mr. Gavigan testified on his own behalf. He stated that while there is a concrete parking pad in the rear of his house, he is unable to use it. He stated that he is unable to walk up the numerous steps because he runs out of oxygen. Mr. Gavigan stated that he is on oxygen and carries a mobile oxygen tank. He further stated that there are 5 or 6 steps from the concrete pad level to the top tier level. There are an additional 4 steps from the top level to the rear entry to the house.

DECISION

In order to reverse the decision of the County with respect to off-street handicapped spaces, Section 8 of the Baltimore County Policy, entitled "Appeal of Denial of Reserved Parking Space", requires that the Board find that the Applicant meets all of the conditions set forth therein:

- (A) The applicant and/or their household has taken all reasonable measures to make the off-street parking useable and available to the disabled applicant.
- (B) The disability of the applicant is of such a severe degree that an extreme hardship would exist if the applicant were to use the available off-street parking.
- (C) The appeal of a reserved on-street space is determined to be one of medical necessity and not one of mere convenience for the applicant.
- (D) The hardships placed on the applicant's neighbors by reserving an exclusive on-street space for the applicant is outweighed by the hardship that would be placed on the applicant if the space were not approved.

When reviewing the exhibits and testimony in this case, it is evident that subsection (A) is satisfied because there is an available parking pad. We find that subsection (B) is satisfied because Mr. Gavigan has a medical condition which requires him to carry and utilize an oxygen tank. The rear of the house contains some unique physical conditions. There is quite a distance from the

parking pad to the back door. Additionally, and more importantly, the two-tiered level of steps to get into the house is indeed an extreme hardship. In contrast, the street in front of the house is only a small step from the front door. We find that subsection (C) is satisfied because of the previously mentioned medical condition from which Mr. Gavigan suffers. Additionally, we find that subsection (D) is also satisfied because of the hardship placed on Mr. Gavigan due to his physical condition and the unique qualities of his back yard outweigh any potential hardship placed on any of his neighbors.

Because the testimony and evidence in this case satisfy the four (4) factors listed above, the Board finds that the Application for Reserved Parking shall be granted.

ORDER

THEREFORE, IT IS THIS 8th day of September, 2021 by the Board of Appeals of Baltimore County.

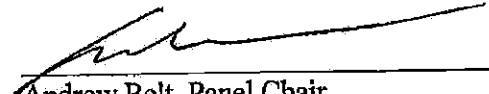
ORDERED that the decision of the Division of Traffic Engineering dated April 21, 2021, in Case No. CBA-21-026 be and the same is hereby **REVERSED**; and it is further,

ORDERED that the application of Charles T. Gavigan for a reserved handicapped parking space at 2758 Yarnall Road, Baltimore, Maryland 21227, be and the same is hereby **GRANTED**.

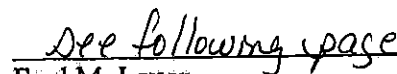
In the matter of Mr. Charles Gavigan
Case No: CBA-21-026

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

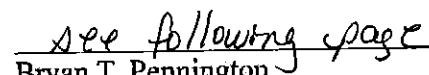
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew Belt, Panel Chair



Fred M. Lauer



Bryan T. Pennington

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**BOARD OF APPEALS
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Andrew Belt, Panel Chair

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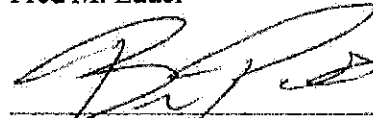
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**BOARD OF APPEALS
OF BALTIMORE COUNTY**

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Bryan T. Pennington



Board of Appeals of Baltimore County

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September 8, 2021

Charles T. Gavigan
2758 Yarnall Road
Baltimore, Maryland 21227

RE: *In the Matter of: Charles T. Gavigan*
Case No.: CBA-21-026

Dear Mr. Gavigan:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington" followed by a stylized flourish.

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

- c. Greg Carski, Bureau Chief/Division of Traffic Engineering and Transportation Planning
Michael F. Filsinger, Chief/Division of Traffic Engineering
D'Andrea L. Walker, Acting Director/Department of Public Works
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law